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Committee on Economic, Social and Cultural Rights

Fifty-fourth session

Summary record (partial)* of the sixth meeting

Held at the Palais Wilson, Geneva, on Wednesday, 25 February 2015, at 3 p.m.

Chairperson: Mr. Sadi

Contents

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of the Gambia

* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3 p.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Initial report of the Gambia (E/C.12/GMB/1; E/C.12/GMB/Q/1; HRI/CORE/GMB/2012)

1. **The Chairperson** said that he was unsure whether, in view of the Gambian Government's unexpected failure to send a delegation to introduce the State party's report and engage in a constructive dialogue, the Committee should send the Gambian authorities a letter of complaint. He requested guidance on the matter from the country rapporteur and other Committee members.

2. **Mr. Dasgupta** (Country Rapporteur) said that the Gambia had been a party to the Covenant since 1979 and that its initial report, due in 1990, had been received only in May 2012. In 1994, the Committee had adopted concluding observations in the absence of a report. Moreover, although the Gambian authorities had expressed gratitude for the concluding observations in the report under consideration, thereby indicating a willingness to cooperate with the Committee, no replies had been received to the list of issues. The Committee should express its dissatisfaction with that situation but, it view of rule 62 of the its rules of procedure, which suggested that a State party was entitled, but not obliged, to send a delegation to take part in proceedings, it was not entirely clear whether a letter of complaint as such was justified. The Committee was, however, required to proceed with consideration of the State party's report and, in order to draw up its concluding observations, it would have to rely on sources other than the Gambian delegation or the replies to the list of issues.

3. The report had highlighted a number of positive developments in the State party which related largely to the adoption of legislative measures, accession to international treaties and, in some cases, policy development. The main question, however, was whether the country actually implemented those policies and whether it fulfilled the obligations it had undertaken. The other main areas of concern to the Committee were: corruption, which prevented the State party from making progress towards the full realization of the rights recognized in the Covenant to the maximum of its available resources; the equal right of men and women to the enjoyment of the rights set forth in the Covenant, an area in which actual achievements were unclear, despite a modicum of progress on the legislative front; trade union rights; the right to social security; the protection accorded to the family, in particular to children, who were often forced into early marriages; the right to an adequate standard of living; the right to the highest attainable standard of health, particularly since clarification was needed on what the State party had done to reduce its remarkably high rates of child and maternal mortality and to criminalize the widespread practice of female genital mutilation; its alarmingly high drop-out rates; and, lastly, the right of everyone, including persons from the most disadvantaged groups, to take part in cultural life.

4. **The Chairperson** said that the Committee had invoked rule 62 when, in the absence of a delegation, it had considered the combined initial and second and third periodic reports of Chad. In the case of Gambia, however, the Committee had been led to believe that a delegation from the State party would appear; and although it was true that there was no rule specifically obliging representatives of the States parties to appear before the Committee, it was customary for them to do so. The Committee might wish to express its dissatisfaction with the delegation's failure to appear in the first paragraph of its concluding observations, as had been done with Chad.

5. **Mr. Schrijver** said that he was aware that visitors to the Gambia were commonly shocked by the tremendous inequality in the country, where nearly half the population lived in poverty. The Gambian State's apparent failure to allocate as many resources as possible to housing, health care or social services was extremely alarming, as was the lack of respect for civil and political rights. As the Human Rights Committee had also found it necessary to consider the situation of the Gambia in the absence of a report, questions about the Gambian authorities' respect for human rights in general were not unwarranted.

6. **Mr. Uprimny Yepes** said that any expression of the Committee's dissatisfaction with the decision of the Gambia not to appear should emphasize that the constructive dialogue was undertaken in large part for the benefit of the State party. It provided States parties with an opportunity to correct any mistakes and clear up any misunderstandings. Figures from the common core document, for instance, appeared to show that women in the Gambia were far more likely to be poor than men. It was to be regretted that no one from the State party could comment on those figures, which, if accurate, indicated that the Gambia had fallen well short of meeting its obligations under the Covenant. He wondered what the place of the Covenant in the domestic legal order was, whether the Ombudsman's Office, mentioned in the State party's report, was a genuinely independent human rights institution and how the Gambian authorities could even attempt to justify the country's criminalization of homosexuality.

7. **Mr. De Schutter** said that a State party's failure to appear put the State party itself at a disadvantage, as the Committee could not presume that a lack of information meant that no problems existed. Nor could assurances be secured that recommended actions would be taken. The Committee should therefore refer to those factors in its concluding observations. Moving on to issues of substance, he said that, as has been noted by the Committee on the Rights of the Child, the State party had failed to invest adequately in social welfare and health systems. Furthermore, discrimination against girls and women in the Gambia was still a major concern. There was no justification, for instance, for the discriminatory provisions that infringed on their inheritance rights. Information provided in the State party's report also suggested that the Gambia continued to view disability as a medical problem of the individual, rather than as a societal issue. The Committee should therefore make it clear to the State party that its approach to disability was outdated and that every effort should be made to include children with disabilities in mainstream schools.

8. **The Chairperson** said that the Committee could draw on the language used in its concluding observations on the combined initial and second and third periodic reports of Chad, which had clearly conveyed the message that dialogue was a key component of the consideration of reports and that the State party's failure to take advantage of the opportunity to hold in-depth discussions was deeply regrettable.

9. **Mr. Dasgupta** said that the Gambian delegation's failure to appear was more egregious than that of the Chadian delegation because it had not provided any response concerning its intentions. The reproach to be expressed in the concluding observations should therefore be couched in more severe terms.

10. **The Chairperson** suggested that Mr. Dasgupta should propose the revisions to be made to the wording of the expression of dissatisfaction.

11. **Ms. Bras Gomes** said it was possible that the rules of procedure reflected the established practice in the early days of the Committee's work, when, if she was not mistaken, the consideration of reports had been a written exercise not involving appearances by States parties. Since then, the importance of the constructive dialogue had increased considerably. Regarding the issues highlighted in the State party's report, she would appreciate further information on the reasons for the Government's evident acceptance of polygamy. The authorities could perhaps take a more active role in

combating the practice. She also wished to know what exactly was meant by the terms "the public interest" in the article of the country's Constitution that stated that every person in the Gambia, whatever his or her race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, was entitled to fundamental human rights and freedoms, but subject to respect for the rights and freedoms of others and for the public interest. Comment on the State party's ranking in the Ibrahim Index of African Governance would be welcome, as would updated figures concerning public spending on social welfare.

12. **Mr. Kedzia** said that the rules of procedure had been adopted in 1989 and that practices had changed since that time. Currently, the established practice was for States parties to appear. It would therefore be wise to refrain from sending any signal to the effect that the appearance of States parties was optional. It was a great pity that the Committee could not engage in constructive dialogue with the delegation of Gambia on the sociocultural realities of the country, in particular as they related to sharia law. He would be particularly interested to learn what impact the existence of customary law and sharia law had on the implementation of the Covenant. He also wished to know what progress, if any, had been made towards the establishment of the Ombudsman's Office, as provided for in the country's Constitution, and the National Human Rights Commission, regarding which a bill had apparently been drafted but not yet submitted to the legislature.

13. **The Chairperson** suggested that the Committee would do well to consider amending rule 62 of the rules of procedure to reflect current practice.

14. **Mr. Chen** said that it was important for the State party to understand that its report on the progress that it had made in fulfilling its obligations under the Covenant was supposed to be considered by the Committee within the framework of a constructive dialogue. The Committee should make its dissatisfaction known in either a letter to the State party or in its concluding observations on the State party's report. The Committee should also remind the State party that it was still required to submit its written replies to the list of issues. There could be many reasons why the delegation had failed to attend the meeting, including a lack of financial or human resources. If that were the case, the United Nations could provide the State party with technical and possibly financial assistance. Whatever the reason, it was the Committee's responsibility to foster cooperation with States parties to ensure the effective implementation of the Covenant rather than simply point out their shortcomings in that endeavour. The Gambia had sent a high-level delegation to appear before the Human Rights Council for its universal periodic review in October 2014 and had undertaken to reply to the questions posed on that occasion at the Council's next session. In view of its willingness to cooperate with the Council, it was all the more important for the Committee to ascertain the reason for the delegation's failure to attend the session.

15. **Mr. Abdel-Moneim** said that a large delegation was not always a guarantee of a constructive and fruitful dialogue. Moreover, it was impossible to determine whether a dialogue had been constructive until the State Party had submitted its next periodic report. Sending delegations to report to the Human Rights Council and to each of the treaty bodies was extremely costly and might not be financially viable for some developing countries. It would be useful for the Committee to take a few hours after meeting with a delegation to take stock of the dialogue itself. If there was any uncertainty as to whether a State party was going to send a delegation to the session, consideration of its report should be rescheduled to allow the Committee to review the report of another State party. Alternatively, representatives of civil society organizations and international NGOs could help compensate for the absence of a delegation by providing supplementary information. Lastly, it should be noted that polygamy was not specific to sharia law, as it existence predated

Islam and was a feature of other cultures. In part, the practice of polygamy could be attributed to social and economic underdevelopment.

16. **Mr. Abashidze** said that the absence of the delegation of the Gambia had provided the Committee with an opportunity to discuss matters that it did not normally have time to discuss. The size of a delegation did not always equate with the quality of a dialogue. However, when a State party had undertaken to present its report and to engage in a dialogue with the Committee and then failed to send a delegation, the Committee should react accordingly. It might be possible to hold a constructive dialogue in another form, for instance with the use of videoconferencing. The Committee should consider revising its general comment No. 1 on reporting by States parties to include the procedure to be followed when a delegation could not or failed to attend a meeting. He wondered whether it would be possible to rearrange the programme of work for the Committee's future sessions to allow more time for drafting general comments and dealing with other pending matters.

17. **Mr. Uprimny Yepes** said that, while the State party's failure to send a delegation to attend the meeting was certainly discourteous, it remained unclear whether it was actually under any legal obligation to do so even though it had, over time, become a de facto obligation. Before it drafted its concluding observations on the Gambia, the Committee needed to determine whether articles 16 and 17 of the Covenant, which required States parties to submit a report to the Committee, also required representatives of the State party to be present at the meeting at which the report would be considered. Two or three Committee members could undertake a legal study of those articles to that end. However the Committee chose to respond to the situation, it had a responsibility to encourage States parties to participate in a constructive dialogue. He agreed about the need to explore other methods of pursuing a dialogue with States parties when they could not or would not send a delegation to meet with the Committee.

18. **Ms. Shin** said that the meetings devoted to the consideration of the report of the Gambia had been scheduled in consultation with the State party itself. In accordance with paragraph 3 of rule 62, once a State party had agreed to the scheduling of its report for consideration by the Committee, the Committee would proceed with the consideration of that report at the time scheduled, even in the absence of a representative of the State party. She did not agree that polygamy was necessarily attributable to social and economic underdevelopment, given the situation in that respect in developed countries such as Saudi Arabia.

19. **Mr. Ribeiro Leão** said that, according to Fact Sheet No. 16 (Rev.1) on the Committee on Economic, Social and Cultural Rights, representatives of reporting States were strongly encouraged, but were not under any legal obligation, to attend the meetings at which their report was considered. He agreed that there was a need to amend rule 62.

20. **The Chairperson** said that the meetings devoted to the report of the Gambia had been scheduled on the premise that representatives of the State party would attend in person to discuss their report with the Committee. To pursue a dialogue with the State party in any other form would undermine the Committee's work. The Committee had never countenanced the possibility of attendance by a delegation being optional. He understood that there was a consensus among the members of the Committee that, in principle, States parties must send a delegation to meet with the Committee as a matter of course. The Committee could, of course, make other arrangements in exceptional cases. He was in favour of amending rule 62 if necessary but any amendments should not impair the Committee's capacity to consider State party reports.

21. **Mr. Pillay** said that it was reasonable for there to be some discussion on the reasons why the State party had failed to send a delegation and wished to remind the members that the Committee had already agreed to use the text of the Committee's concluding

observations on Chad, subject to modification by Mr. Dasgupta, as a model for the relevant portion of its concluding observations on the Gambia.

22. **Mr. De Schutter** said that, in the event that a State party did not submit a report, the Committee should proceed to consider its fulfilment of its obligations under the Covenant on the basis of the information available to it. It would be difficult to justify any other course of action in cases where a State party failed to send a delegation to present its report, especially as it was not clear whether representatives of the State party were under any obligation to attend the meeting in the first place. The Committee could proceed to amend rule 62 but the amended rule could not be applied retroactively to the Gambia. Although the Committee could not say that the State party had violated the provision of the Covenant by failing to send a delegation, in its concluding observations on the Gambia, based on those for Chad, it should remind the State party of the need to cooperate with it by attending meetings and by providing written replies when requested to do so.

23. **The Chairperson** said that there was no question of the Committee stating in its concluding observations on the Gambia that the State party had violated the provisions of the Covenant by failing to send a delegation. It was his understanding that the Committee intended to use the same wording as had been used in its concluding observations on Chad, with some modifications.

24. **Mr. Dasgupta** said that there appeared to be a consensus on the need to amend rule 62 and on dealing with the State party's failure to send a delegation in much the same tone as had been used in the case of Chad.

The meeting was suspended at 4.50 p.m. and resumed at 4.55 p.m.

25. **Mr. Martynov** said that the unemployment rate in the Gambia was alarmingly high, particularly among young people. He would be interested to know what the rate had been in 2014 and whether the State party had adopted a new programme to combat unemployment. The information contained in paragraph 65 of the State party's report was too cursory to provide a satisfactory overview of the results yielded by the previous programme, and the scant figures provided were distinctly unimpressive. It was safe to assume that the State party had difficulty in collecting data on employment and on the realization of labour rights. The Committee should encourage it to step up its efforts to collect disaggregated statistics and to provide them to the Committee in the future. It was unlikely that the rights enshrined in article 7 of the Covenant were fully protected if 96 per cent of the Gambian workforce was employed in the informal sector. The fact that the joint industrial councils, which were supposed to be responsible for, inter alia, setting the country's minimum wage, had never actually been constituted was a major cause for concern. There was no universal social security system in the Gambia, and, in fact, there appeared to be no social security programmes for workers in the informal sector. The Committee should request the State party to provide additional information on that subject. The Committee should consider requesting the State party to submit its next periodic report in two or three years' time instead of in four or five years' time.

26. **Mr. Ribeiro Leão** said that the comments made by Mr. Martynov should be reflected in the Committee's concluding observations on the initial report of the Gambia.

27. **Ms. Bras Gomes** said that she would like more information on the economic recovery associated with the strong performance in the tourism and agriculture sectors. She wished to know what impact that recovery had had on employment figures. The high level of youth unemployment was a source of concern, particularly given the significant size of the population aged between 15 and 24. Clarification was needed on the terms "constructive dismissal" and "unfair dismissal" contained in paragraphs 68 and 69 of the initial report. Further information was also required on the role of the Social Security and Housing Finance Corporation and on the Women's Act of 2010, the benefits it covered and

its provisions on eligibility. If the minimum pension covered no more than the cost of a bag of rice, it was clearly insufficient and she therefore wished to know when it would be reviewed. More information was needed on the informal contributory arrangement known as "osusu", which was reportedly popular among workers and market women. She had noticed that reference had been made in the report to specific provisions protecting the rights of elderly women but not to anything similar for elderly men; the State party should be reminded that the Covenant provided for equal rights for men and women.

28. **Mr. Schrijver** noted that the State party had not provided any relevant statistics or disaggregated data on employment and unemployment. Furthermore, there was no information on government measures to address the high rate of youth unemployment. The existence of a large informal sector led him to suspect that child labour was a problem in the Gambia, despite legislation that set the minimum working age at 16. He wished to know what impact child labour had on education and school drop-out rates. While it was clear from the State party's report that trade union legislation met international standards, no information had been provided on the existence of trade unions; nor did the report state whether they could engage in collective bargaining or whether workers enjoyed the right to strike.

29. **Mr. Kedzia** said that attention should be paid to the possibility of helping to secure technical assistance for the State party as provided for in article 22 of the Covenant. He would like clarification on the data provided on employment, particularly with regard to the percentages of the working population employed in the informal sector or working on a self-employed basis. Since civil servants were unable to join trade unions and the informal sector accounted for such large part of the labour market, he wondered who benefited from trade union legislation. Progress had nonetheless been made, despite challenges, including through the Gambia Priority Employment Programme, which had been launched in partnership with the United Nations Development Programme and the International Labour Organization.

30. **Mr. Ribeiro Leão** said that he wished to know whether a new poverty reduction programme would be introduced to replace the Programme for Accelerated Growth and Employment, which was to end in 2015.

31. **Mr. Pillay** said that he was concerned at the high rate of poverty and would like clarification on the figures on persons living in poverty and information on whether poverty rates had changed in recent years. He wished to know whether the Gambia Priority Employment Programme had been successful in increasing employment and reducing poverty. No reference was made in the report to housing, and information was therefore needed on access to adequate and affordable housing, social housing, urban slums, forced evictions and relevant legislation. He would appreciate an explanation of the assertion in the report that there were low levels of homelessness in the Gambia and wished to receive disaggregated data on access to basic services, including sanitation and safe drinking water.

32. **Ms. Ravenberg** said that the State party should ensure that the entire population had access to health facilities. Child and maternal mortality was too high and there were indications that infant mortality was rising after years of decline. She wished to know what steps were being taken to reduce stillbirth rates and infant mortality and to support children's health. Up-to-date statistics would be appreciated. Information before the Committee indicated that awareness of methods of HIV prevention was relatively low and that there was no specific budget for efforts to tackle HIV/AIDS. More details should be provided on government policy on HIV/AIDS. While welcoming the domestic violence bill of 2011, she was concerned at weaknesses in the legislation, at the general lack of awareness about domestic violence and at shortcomings in the enforcement of legislation in that connection.

33. **Mr. De Schutter** said that the main development strategy, the Programme for Accelerated Growth, had failed due to the absence of a rights-based approach. He therefore wished to know how the State party would rectify its approach when developing future plans for spurring growth and employment. Data on food security and hunger were patchy and government efforts to improve food production by, for example, purchasing tractors did not have an impact on the poorest farmers. He would appreciate information as to whether the means chosen by the Government to boost food production were redistributive and were providing support for small farmers.

34. **Mr. Kedzia** noted that the domestic violence bill did not cover female genital mutilation, which was not punishable by law. Although problematic because it was so deeply ingrained as a traditional practice in the Gambia, it should nonetheless be made punishable by law. He also wished to know what measures were being taken by the State party to address the reportedly high levels of child labour.

35. **Mr. Uprimny Yepes** said that, in addition to taking a rights-based approach, future development strategies should also be gender sensitive, particularly in view of the notable gender gap in poverty rates. The lack of data on the situation in the Gambia was a problem, since statistical data were crucial for effective policymaking.

36. **Mr. Pillay** said that he wished to highlight the problem of child malnutrition, which had increased, particularly among under-fives. There was also a growing problem with children in street situations, as noted by the Committee on the Rights of the Child in 2015.

37. **Mr. Kerdoun** said that he would like to understand how an increased education budget and newly built schools would be maintained. Despite the large budget for education, problems persisted, including high primary school drop-out rates for girls and discrepancies in educational provision between rural and urban areas, and he wished to know how those problems would be tackled.

38. **Ms. Ravenberg** said that a report by the United States Department of State had noted that families had to pay tuition fees and other costs, including for books, uniforms and lunches, at primary school. High levels of illiteracy were doubtlessly fuelled by high drop-out rates, especially among girls, and the fact that 29 per cent of children had never attended school. She would appreciate information on the measures adopted to address those problems and ensure that primary education was free and available to all, including in rural areas. She wished to know how the Government guaranteed the right to education of refugee children, given that only adult refugees received an identity card which implied that children could experience difficulties in accessing education and health services.

39. **Ms. Shin** said that the State party had not provided enough information to permit the Committee to assess the extent of trafficking in persons, despite the fact that the issue had been raised during the universal periodic review of the Gambia by the Human Rights Council and by the Committee on the Elimination of Discrimination against Women in 2014. Details would be appreciated on the provisions of the Trafficking in Persons Act of 2007 and on how the National Agency against Trafficking went about ensuring the implementation of that law.

40. **Mr. Abashidze** said that he would welcome information on State expenditure on cultural activities.

41. **Mr. Dasgupta** said that many of the comments made by Committee members pointed to an absence of data and a resultant lack of clarity about the implementation of the Covenant in the State party. The Committee should consider taking an innovative approach to the formulation of recommendations for inclusion in its concluding observations on the initial report of the Gambia. He suggested that Committee members should gather data

from other sources and provide draft paragraphs dealing with their areas of expertise for collation by the secretariat.

The discussion covered in the summary record ended at 5.50 p.m.